

No. 11649

United States
Court of Appeals
for the Ninth Circuit

E. L. EASON, JR., FLORA RUTH EASON and
LEWIS C. EASON, as Trustee of the Estate of
Mildred Eason Stouffer, co-partners doing busi-
ness as Eason Grinding Company,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

LEO R. FRIEDMAN,
JOS. I. McMULLEN,
935 Russ Bldg.,
San Francisco 4, Calif.

For Appellee:

JAMES M. CARTER,
United States Attorney,
RONALD WALKER,
ROBERT E. WRIGHT,
Assistants U. S. Attorney,
600 U. S. Post Office and Court House
Bldg.,
Los Angeles 12, Calif. [1 *]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States In and
For the Southern District of California, Central Division

No. 5445-M Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. L. EASON, Jr., FLORA RUTH EASON, and
LEWIS C. EASON as Trustee of the Estate
of Mildred Eason Stouffer, co-partners doing
business as Eason Grinding Company,

Defendants.

COMPLAINT

The United States of America, plaintiff, by Charles H. Carr, its attorney for the Southern District of California, says that:

I.

Defendants E. L. Eason, Jr., Flora Ruth Eason, and Lewis C. Eason as Trustee of the Estate of Mildred Eason Stouffer reside in the County of Los Angeles, California, and do business in said county as co-partners under the firm name and style of Eason Grinding Company.

II.

Jurisdiction of this action is granted to the Court by the provisions of Section 24 of the Judicial Code, as amended, (Title 28 U.S.C.A. Section 41 (1)) and by the provisions of Section 403(c) of the Renegotiation Act. [2]

III.

After due notice to defendants, proceedings for the renegotiation of defendants' contracts and subcontracts were had and conducted by representatives of the War Contracts Price Adjustment Board, and thereafter on the 11th day of December, 1944, the Under Secretary of War, acting under and by virtue of the Renegotiation Act and pursuant to authority delegated to him by the War Contracts Price Adjustment Board, duly determined that of the profits realized by defendants during the fiscal period commencing December 1, 1942, and ending August 31, 1943, on their contracts and subcontracts subject to renegotiation, Sixty-nine Thousand Two Hundred Thirty-two Dollars and Six Cents (\$69,232.06) thereof were excessive profits. On the 11th day of December, 1944, the Under Secretary of War notified defendants of his determination by registered mail and sent defendants a copy of his order. A full, true, and correct copy of the order and determination of the Under Secretary of War is attached hereto as Exhibit "A" and by reference made a part hereof.

IV.

The tax credit to which defendants are entitled under Section 3806 of the Internal Revenue Code is in the amount of Thirty-three Thousand Five Hundred Eighty-four Dollars and Seventy-nine Cents (\$33,584.79). This tax credit is computed upon the assumption that the profits determined to be excessive were returned as income by defendants for tax purposes and that the appropriate taxes have been or will be paid upon such profits.

V.

On February 10, 1945, the War Contracts Price Adjustment Board notified defendants that the order of the Under Secretary of War dated December 11, 1944, was adopted by the Board as its order, and demand was made upon defendants for payment to the United States on or before February 25, 1945, of the excessive profits determined to be owing, less the appropriate tax credit. A full, true, and correct copy of the notice of February 10, 1945, is attached hereto as Exhibit "B" and by reference made a part hereof. [3]

VI.

Defendants have not petitioned the Tax Court of the United States for a redetermination of the amount of excessive profits received by them as provided by Section 403(e) of the Renegotiation Act, and the period for filing such petition has expired. Pursuant to the provisions of Section 403 (e) of the Renegotiation Act, the order determining the amount of defendants' excessive profits has become final and conclusive, and it is not subject to review or redetermination by any Court or other agency.

VII.

Defendants have not paid to the United States, and the United States has not withheld, or by any method eliminated, said excessive profits in the amount of Sixty-nine Thousand Two Hundred Thirty-two Dollars and Six Cents (\$69,232.06), less the tax credit aforesaid, nor any part thereof. Said amount is now due, owing, and unpaid.

Wherefore, plaintiff prays judgment against defendants in the sum of Thirty-five Thousand Six Hundred Forty-seven Dollars and Twenty-seven Cents (\$35,647.27), with interest at the rate of 6% per annum from the 25th day of February, 1945.

CHARLES H. CARR,
United States Attorney,
RONALD WALKER,
Assistant U. S. Attorney,
Chief of Civil Division.

/s/ ROBERT E. WRIGHT,
Assistant U. S. Attorney,
Attorneys for Plaintiff. [4]

EXHIBIT A

War Department
Office of the Under Secretary
Washington

ORDER UNDER DELEGATED AUTHORITY DETERMINING EXCESSIVE PROFITS

Pursuant to authority duly delegated by the War Contracts Price Adjustment Board, a renegotiation proceeding was duly commenced with Eason Grinding Company (hereinafter called the "Contractor") with respect to the aggregate of the amounts received or accrued by the Contractor under the contracts with the Departments and subcontracts as defined in the Renegotiation Act (such contracts and subcontracts being hereinafter col-

lectively referred to as "said contracts with the Departments and subcontracts") for the Contractor's fiscal period commencing 1 December 1942 and ending 31 August 1943, (hereinafter called "said fiscal period").

In connection with such renegotiation proceeding, a conference was held with the Contractor at or in connection with which there were submitted by the Contractor and obtained from governmental or other reliable sources, certain financial, operating and other data relating to the Contractor's business and the Contractor's profits derived from said contracts with the Departments and subcontracts during said fiscal period. At and in connection with such conference the Contractor has been afforded full opportunity to submit such additional information and to present such contentions as the Contractor deemed material to a determination of excessive profits within the meaning of the Renegotiation Act.

In determining the excessive profits hereinafter determined, due consideration has been given to all such financial, operating and other data and information so furnished or obtained, to each of the contentions so presented, and to all of the factors referred to in subsection (a) (4) (A) of the Renegotiation Act. [5]

As a result of such renegotiation it is hereby determined that \$70,000 represents the portion of the Contractor's profits derived from said contracts with the Department and subcontracts for

said fiscal period, which is excessive within the meaning of the Renegotiation Act. After proper adjustment on account of taxes, other than Federal taxes, measured by income which are attributable to that portion of the Contractor's profits derived from said contracts with the Departments and sub-contracts for said fiscal period which is not excessive, it is hereby determined that the amount of excessive profits of the Contractor for said fiscal period which should be eliminated is \$69,232.06.

This order will be deemed the determination of the War Contracts Price Adjustment Board upon the conditions prescribed in subsection (d) (5) of the Renegotiation Act. If, and as soon as, this order shall be deemed the determination of the War Contracts Price Adjustment Board, pursuant to subsection (d) (5) of the Renegotiation Act, then the Secretary of War (or such official or officials in the War Department to whom the power, function and duty of exercising such authority and carrying out such direction may be or have been delegated or successively redelegated) is hereby authorized and directed to take such action (including the authorization and direction of any other Secretary or Secretaries to take such action) as it provided by the Renegotiation Act and as he deems appropriate to eliminate such excessive profits to be eliminated.

In connection with the payment or discharge by any means of such excessive profits to be eliminated, the Renegotiation Act provides that the Con-

tractor shall be allowed the applicable credit, if any, for Federal income and excess profits taxes as provided in Section 3806 of the Internal Revenue Code. [6]

Dated, Issued and Entered on 11 December, 1944.

/s/ ROBERT P. PATTERSON,
Under Secretary of War.

Acting on behalf of the War Contracts Price Adjustment Board created by the Renegotiation Act, under due delegations of authority made pursuant to subsection (d) (4) of the Renegotiation Act. [7]

EXHIBIT B

Room 3D 573—The Pentagon
10 February, 1945

Eason Grinding Company
1823 East Slauson Avenue
Los Angeles, California

Gentlemen:

You are hereby notified that, no review having been initiated by the War Contracts Price Adjustment Board, either on your request or on its own motion, of the order dated, issued and entered on 11 December 1944 pursuant to renegotiation under the Renegotiation Act, by Robert P. Patterson, Under Secretary of War, acting on behalf of the War Contracts Price Adjustment Board in accordance with authority delegated by it, determining that of your profits derived from contracts with

the Departments and subcontracts for your fiscal period commencing 1 December 1942 and ending 31 August 1943, Sixty-nine Thousand, Two Hundred Thirty-two Dollars and Six Cents (\$69,232.06) represents excessive profits which should be eliminated, such order is deemed the determination of the War Contracts Price Adjustment Board.

A copy of such order is enclosed herewith.

This notice is being mailed to you by Registered Mail on 10 February 1945.

Demand is hereby made for the payment of the amount of such excessive profits to be eliminated less the tax credit, if any, referred to in such order. Any check should be drawn to the order of the Treasurer of the United States and delivered to the Chairman, War Department Price Adjustment Board, Room 3-D 573—The Pentagon, Washington 25, D. C.

Interest will accrue at the rate of 6% per annum from and after 25 February 1945 on any amount due under such order and unpaid. [8]

Very truly yours,

WAR CONTRACTS PRICE
ADJUSTMENT BOARD,

By /s/ J. S. FEIGHT,

Lieutenant, USNR, Secretary.

Countersigned:

/s/ MAURICE HIRSCH,

Colonel, General Staff Corps. Acting on behalf of
the Secretary of War.

[Endorsed]: Filed June 6, 1946.

[9]

[Title of District Court and Cause.]

ANSWER

Come now the defendants above named and in answer to the complaint of plaintiff on file herein, deny and allege as follows, to wit:

First Defense

'The complaint fails to state a claim against defendants or any of them upon which relief can be granted.

Second Defense

'That said order of December 11, 1944, (marked Exhibit "A" and attached to and by reference incorporated in plaintiff's complaint; is void; that neither the Secretary of War nor said [10] Under Secretary of War has or had the power or authority to make said order and that neither said Secretary of War or said Under Secretary of War, or any other person, or the United States of America has the power or authority to enforce said order according to its terms or otherwise or at all either by suit or action or in any other manner, for the reason that said Renegotiation Act is void, without lawful effect and repugnant to the Constitution of the United States in each of the following particulars, to wit:

(a) Said Renegotiation Act is repugnant to Article I, section 1, and Article II, section 8, paragraph 18 of the Constitution of the United States in that it unlawfully delegates legislative power to the War Contracts Price Adjustment Board and

to the defendants and to the secretaries of the various departments as in said Act set forth:

(b) That said Renegotiation Act is repugnant to the Fifth Amendment to the Constitution of the United States in that it deprives plaintiffs of their property without due process of law;

(c) That said Renegotiation Act is repugnant to the Fifth Amendment to the Constitution of the United States in that it takes plaintiffs' property for public use without just or any compensation;

(d) That said Renegotiation Act is repugnant to the Tenth Amendment to the Constitution of the United States in that it attempts to exercise a power not delegated to the United States;

(e) That said Renegotiation Act is repugnant to Article I, section 1, and Article V, section 8, paragraph 18, of the Constitution of the United States and to the Fifth and Tenth Amendments thereto, in that by said Act it is provided that "whenever, in the opinion of the Board the amounts received or accrued under contracts with the departments and subcontracts may reflect excessive profits" the Board is authorized and directed to "issue [11] and enter an order determining the amount, if any, of such excessive profits under such contract or subcontract" and neither said Renegotiation Act nor any other provision of law sets forth or declares any rules, standard, guide or policy by which said Board is to be guided in the administration of said Act or in the determination of what are or are not excessive profits other than the arbitrary order, whim or caprice of said Board or other

person to whom it delegates its authority; that by said Act Congress has attempted to delegate to the Board the power to refix contract prices and has directed, authorized and empowered it, by unguided opinion and without setting forth any standard, gauge, or rule, to determine what profits are excessive;

(f) That said Renegotiation Act further violates said foregoing provisions of the Constitution and the Fifth and Tenth Amendments thereto in that it purports to vest in the Board the power to renegotiate and change and impair the obligation of contracts made and entered into between private persons, firms and corporations and to which contracts the government of the United States is not a party, and in instances where no privity of contract exists between the contracting parties and the United States;

(g) That said Renegotiation Act is further repugnant to said Articles of the Constitution of the United States and to said Fifth and Tenth Amendments thereto, in that it provides that upon any renegotiation conducted and made and upon any order entered pursuant thereto by the Board, said Board may make a revision of said contracts renegotiated by reducing the contract price of said contract, but said Renegotiation Act contains no provision whereby the contractor or subcontractor can have his contract price raised in the event that such contract price did not produce a fair profit on the business done under said contract [12] or any profit at all;

(h) That said Renegotiation Act is further repugnant to said Articles of the Constitution and to said Fifth and Tenth Amendments thereto in that it does not provide for any equality of treatment as to all persons, firms or corporations whose contracts are made subject to the provisions of said Act, in the following particulars, to wit:

1. That by the provisions of said Act the Board is authorized, in its discretion, to exempt from some or all of the provisions of said Act “any contracts or subcontracts under which, in the opinion of the Board, the profits can be determined with reasonable certainty when the contract price is established * * * when the period of performance under said contract or subcontract will not be in excess of thirty days”;

2. That by the provisions of said Act the Board may exempt from the provisions of said Act a portion of any contract or subcontract during a specified period or periods if in the opinion of the Board the provisions of the contract are otherwise adequate to prevent excessive profits;

3. That by the provisions of said Act the Board is authorized to exempt contracts and subcontracts, both individually and by general classes and types, from the operation of said Act;

4. That said Renegotiation Act is made to apply only to contracts involving amounts in excess of \$500,000.00 and does not apply to contracts involving amounts less than \$500,000.00;

(i) That said Renegotiation Act is further violative of said Articles of the Constitution and Amend-

ments in that it directs the Board in determining excess profits under any contract not to make allowances for any item of cost to the extent in the opinion of the Board such item is unreasonable or not properly [13] chargeable to such contract or subcontract; that said Act does not contain any standard, guide or rule for the determination of what are unreasonable items of cost or costs for the determination of what are or are not costs properly chargeable to such contract or subcontract.

(j) That said Renegotiation Act further violates said Articles of the Constitution and Amendments thereto in that it prohibits resort and recourse to the judicial courts of the United States by any person injured by an order of the Board.

(k) That in exercising the purported power to determine excessive profits the Renegotiation Act does not contain any limitation upon or description of the character of the material or data which the Board may consider;

(l) That said Renegotiation Act is further violative of said Articles of the Constitution and Amendments thereto in that it contains no provision giving to the contractor the right to cross-examine witnesses; that said Renegotiation Act does not contain any provision requiring the Board to set forth in any manner findings of facts or figures forming the basis of any decision determining the existence of any excessive profits; or requiring any Secretary exercising delegated authority to set

forth in his order any findings on which is based the determination of excessive profits.

(m) Said Renegotiation Act does not contain any provision allowing a review in any court of the United States of any unilateral arbitrary or other decision made by a Secretary determining the existence of excess profits;

(n) That said Renegotiation Act is further repugnant to said Articles of the Constitution and Amendments thereto in that it permits each contract to be renegotiated by the Board under the provisions of said Act to be construed in a manner [14] different from that of any other contract in the computation of what constitutes an excessive profit and permits the use of a different standard or guide in the determination of what constitutes excessive profits even when dealing with contracts of exactly the same class, covering the same materials and operating during the same period of time.

(o) That said Act is repugnant to said Articles of the Constitution and Amendments thereto in that it directly operates to impair the obligations of contracts entered into between defendants and private persons and corporations and directly operates to deprive defendants of their property without due process of law.

Third Defense

(a) Defendants admit the allegations contained in paragraph I of plaintiff's complaint.

(b) Defendants deny the allegations of para-

graph II of plaintiff's complaint and deny that the above-entitled court has jurisdiction of this action at all for each and all of the reasons set forth in the second defense of this answer.

(c) Deny all the allegations of paragraph III of plaintiff's complaint, save and except the portion thereof reading as follows: "On the 11th day of December, 1944, the Under Secretary of War notified defendants of his determination by registered mail and sent defendants a copy of his order. A full, true and correct copy of the order and determination of the Under Secretary of War is attached hereto as Exhibit "A" and by reference made a part hereof;" which latter allegations defendants admit.

(d) Admit the allegations of paragraph IV of plaintiff's complaint, with the proviso that said defendants are only entitled to said tax credit therein alleged in the event that it be determined herein that during the period commencing December 1, 1942, and [15] ending August 31, 1943, they made excessive profits in the sum of \$70,000.00.

(e) Admit the allegations of paragraph V of plaintiff's complaint.

(f) Referring to paragraph VI of plaintiff's complaint defendants admit that they have not petitioned the tax court of the United States for a redetermination of the amount of alleged excessive profits as set forth in said order of December 11, 1944, and admit that the period for filing such petition has expired; deny that pursuant to the provisions of section 403(c) of said Renegotiation

Act the order determining the amount of defendant's excessive profits has therefore or otherwise or at all become final or conclusive and is not subject to review or redetermination by any court or other agency.

(g) Referring to paragraph VII of plaintiff's complaint defendants admit that they have not paid to the United States said sum of \$60,232.06 or any part thereof; deny that said amount or any part thereof is now due, owing or unpaid.

Fourth Defense

That said order of December 11, 1944, is unenforceable and void as being violative of the due process clause of the Constitution of the United States in the following particulars, to wit:

(a) That said order and the determination of excessive profits contained therein is based upon information secretly collected and not disclosed;

(b) That said order does not contain any general or special findings upon which the determination of excessive profits was made or based.

Fifth Defense

No contracts made by defendants or work done by defendants [16] for the period commencing December 31, 1942, and ending August 31, 1943, were made with the United States or performed for the United States or with any others than with private corporations or with private parties; that no single contract for said work during said period of time exceeded in amount the sum of \$99,000.00.

Sixth Defense

Deny that for or during the period commencing December 31, 1942, and ending August 31, 1943, that defendants made, earned or received excess or excessive profits in the sum of \$70,000.00, or in any other sum or amount at all.

Wherefore, defendants pray that plaintiff take nothing by reason of the complaint on file herein, that they have judgment herein for their costs and for such other and further relief as may to the court seem meet and just in the premises.

/s/ JOS. I. McMULLEN,

/s/ LEO R. FRIEDMAN,

Attorneys for Defendants.

(Acknowledgment of Service by Mail attached.)

[Endorsed]: Filed Aug. 8, 1946.

[17]

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This cause came on for hearing, before the Court without a jury, on January 14, 1947, and the Court having considered the pleadings and the stipulations made and entered into in open court, upon the hearing of this cause, and being now fully advised in the premises, now finds the facts and states the conclusions of law, as follows:

FINDINGS OF FACT

1. That at all times herein mentioned, defendants E. L. Eason, Jr., Flora Ruth Eason, and Lewis C. Eason, as Trustee of the Estate of Mil-

dred Eason Stouffer resided in the County of Los Angeles, California and did business in said County as co-partners, under the firm name and style of Eason Grinding Company.

2. After due notice to defendants, proceedings for the renegotiation of defendants' Contracts and Subcontracts were had and conducted by representatives of the War Contracts Price Adjustment Board, and thereafter on the 11th day of December, 1944, the Under Secretary of War, acting under and by virtue of the [19] Renegotiation Act, and pursuant to authority delegated to him by the War Contracts Price Adjustment Board, duly determined that of the profits realized by defendants during the fiscal period commencing December 1, 1942 and ending August 31, 1943, on their contracts and subcontracts, subject to renegotiation, Sixty Nine Thousand Two Hundred Thirty Two and 06/100 Dollars (\$69,232.06) thereof were excessive profits, and on said date notified defendants of his determination by Registered mail and sent defendants a copy of his order.

3. That the tax credit to which defendants are entitled, under Section 3806, of the Internal Revenue Code, is in the amount of Thirty Three Thousand Five Hundred Eighty Four and 79/100 Dollars (\$33,584.79).

4. That on February 10, 1945, the War Contracts Price Adjustment Board notified defendants that the order of the Under Secretary of War dated December 11, 1944, was adopted by the board as its order, and demand was made upon defendants, for the payment to the United States on or

before February 25, 1945, of the excessive profits determined to be owing, less the appropriate tax credit.

5. That defendants have not petitioned the tax court of the United States for a redetermination of the amount of excessive profits received by them, as provided by Section 403(e) of the Renegotiation Act and the period for filing such petition has expired.

6. That defendants have not, nor has either of them, paid to the United States said excessive profits in the amount of Sixty Nine Thousand Two Hundred Thirty Two and 06/100 Dollars (\$69,232.06), less the tax credit aforesaid nor any part thereof; and that the amount now due, owing and unpaid the United States from the defendants is \$40,103.18, which amount includes interest at the rate of 6% from February 25, 1945 to date.

CONCLUSIONS OF LAW

1. That the Court has jurisdiction of the parties and of the subject matter of this action.

2. That plaintiff is entitled to recover from the defendant, the sum of \$40,103.18. [20]

It Is Ordered, that judgment should be entered in conformity herewith.

Dated April 19, 1947.

/s/ LEON R. YANKWICH,

Judge, United States

District Court.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 19, 1947.

[21]

In the District Court of the United States In and
For the Southern District of California, Cen-
tral Division

No. 5445-Y Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

E. L. EASON, Jr., FLORA RUTH EASON and
LEWIS C. EASON, as Trustee of the Estate
of Mildred Eason Stouffer, co-partners doing
business as Eason Grinding Company,

Defendants.

JUDGMENT

This cause came on regularly for hearing, before
the Court without a jury, on January 19, 1947, and
in conformity with the Court's Findings of Fact
and Conclusions of Law, it is:

Ordered and Adjudged, that plaintiff, United
States of America, do have and recover from the
defendants, E. L. Eason, Jr., Flora Ruth Eason,
and Lewis C. Eason, as Trustee of the Estate of
Mildred Eason Stouffer, co-partners doing business
as Eason Grinding Company, the sum of \$40,-
103.18.

Dated this 19th day of April, 1947.

/s/ LEON R. YANKWICH,

Judge, U. S. District Court.

Judgment entered April 19, 1947. Docketed April
22, 1947. C. O. Book 42. Page 713. Edmund L.
Smith, Clerk.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 19, 1947.

[23]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that defendants above named do herewith and hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment and order made, rendered and filed in the above entitled court and cause on April 19, 1947, and entered in the Civil Order Book 42, at page 713, under date of April 22, 1947, and from the whole of said judgment and order. Said judgment and order having been made and rendered in favor of plaintiff and against defendants.

Dated April 25, 1947.

LEO R. FRIEDMAN,
JOS. I. McMULLEN,
Attorneys for Defendants.

(Acknowledgment of Service.)

[Endorsed]: Filed May 2, 1947.

[25]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 30 inclusive contain full, true and correct copies of Complaint; Answer; Findings of Fact and Conclusions of Law; Judg-

ment; Notice of Appeal; Statement of Points on Which Appellants Intend to Rely on Appeal and Designation of Record on Appeal which, together with copy of Reporter's Transcript of Proceedings held on January 15, 1947, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$7.95 which sum has been paid to me by appellants.

Witness my hand the seal of said District Court this 5th day of June, A. D. 1947.

(Seal)

EDMUND L. SMITH,
Clerk.

[Endorsed]: No. 11649. United States Court of Appeals for the Ninth Circuit. E. L. Eason, Jr., Flora Ruth Eason and Lewis C. Eason, as Trustee of the Estate of Mildred Eason Stouffer, co-partners doing business as Eason Grinding Company, Appellants, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed June 6, 1947.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 11648

E. L. EASON, JR.,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

and

No. 11649

E. L. EASON, JR., FLORA RUTH EASON, and
LEWIS C. EASON, as Trustee of the Estate
of Mildred Eason Stouffer, co-partners doing
business as Eason Grinding Company,

Appellants.

vs.

UNITED STATES OF AMERICA,

Appellee.

STIPULATION FOR CONSOLIDATION OF
CASES ON APPEAL AND THE SUBMISSION
THEREOF ON ONE PRINTED RECORD

Whereas, the above entitled cases were consolidated and tried together in the United States District Court for the Southern District of California, and appellants above named have perfected their appeals to the above entitled court from the judgments rendered in each case, which said appeals have been docketed as above noted; and

Whereas, said cases involved the same legal points and issues;

It is hereby Stipulated by and between the parties to the above appeals that the two foregoing cases may be consolidated for hearing on said appeal and that but one record be printed on said appeal, omitting therefrom the duplication of the reporter's transcript.

Dated June 9, 1947.

/s/ LEO R. FRIEDMAN,

/s/ JOS. I. McMULLEN,

Attorneys for Appellants.

CHARLES H. CARR,

United States Attorney,

RONALD WALKER,

ROBERT E. WRIGHT,

Assistant U. S. Attorneys,

/s/ ROBERT E. WRIGHT,

Assistant U. S. Attorney,

Attorneys for Appellee.

So Ordered:

/s/ FRANCIS A. GARRECHT,

Senior United States Circuit Judge.

[Endorsed]: Filed June 17. 1947. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Causes Nos. 11648-49]

AMENDMENT OF DESIGNATION OF RECORD TO BE PRINTED, POINTS RELIED ON ON APPEAL AND STIPULATION RELATIVE TO SAME.

Whereas, the above entitled Court heretofore made its order consolidating the above cases for hearing on appeal and holding the preparation of record on appeal in abeyance until a decision of the Supreme Court of the United States should be rendered on the constitutionality of the Renegotiation Act; and

Whereas, said decision has heretofore been rendered in the cases of *Lichter, et al, v. United States*; and

Whereas, said decision of said Supreme Court has disposed of all questions of constitutionality relative to said Renegotiation Act and adversely to the contentions of appellants;

Appellees do herewith and hereby waive and withdraw all of the points heretofore designated in their Statement of Points on which they intend to rely on appeal, save and except Point No. 3 thereof reading:

“That the District Court erred in holding and rendering judgment for plaintiff for interest from the 25th day of February, 1945 to the date of said judgment or allowing plaintiff to recover any interest at all.”

That in order to present the foregoing point on appeal, it is unnecessary to print the entire record

as contained in appellants' "Designation of Contents of Record on Appeal" heretofore filed in the above Court.

Wherefore, it is hereby stipulated by and between the parties to the above action that the "Designation of Contents of Record on Appeal" be and the same is hereby amended by excluding therefrom all matters save and except the following, to wit:

1. The Complaint.
2. Answer of defendant.
3. Findings of fact and conclusions of law.
4. The judgment.
5. Notice of appeal.
6. This amendment and stipulation.

/s/ LEO R. FRIEDMAN,

/s/ JOS. I. McMULLEN,

Attorneys for Appellant.

JAMES M. CARTER,

United States Attorney,

By /s/ (Illegible.)

Assistant U. S. Attorney.

So Ordered:

/s/ WILLIAM DENMAN,

Chief Judge of the United States Court of Appeals
for the Ninth Circuit.

[Endorsed]: Filed October 25, 1948. Paul P.
O'Brien, Clerk.

